THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.102 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioners herein question the action of the respondents, in not considering their objections, filed in reply to the notice issued under Section 13 (2) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for brevity, 'the Act').

Sri G.L.Nageswara Rao, learned counsel for the petitioners, would place reliance on Section 13 (3A) of the Act to submit that if, on receipt of notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and, if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. Learned counsel would also submit that, in reply to the notice under Section 13 (2) of the Act, the petitioners herein had raised objections which were not considered by the respondents; and consequently the action taken thereafter is arbitrary and illegal.

On being asked to state the details of the objections, raised before the authorized officer, learned counsel would state that the first petitioner is the husband of the deceased-borrower; their joint property was mortgaged to the respondent bank; on the death of the borrower, the property devolved on the petitioners herein (the spouse and the children of the deceased); and, as the property stands devolved in favour of the minors, the property cannot be subjected to mortgage. In the impugned order the petitioners' objections were negatived contending that a Will was in existence whereby the entire property was devolved in favour of the first petitioner.

Even if the first petitioner's contention, that no such Will is in existence were to merit acceptance, the property which devolved on the petitioners herein would, undoubtedly, be subject to the mortgage created earlier. As this objection is frivolous, no interference is called for.

The mere fact that the petitioners have lodged an insurance claim would not disable the respondents from recovering the amounts due. The requirement of considering the objections is not a mere ritual or an empty formality. The objections, which the borrower or the guarantor has raised, must be tenable necessitating consideration. It is evident that these objections are only raised to avoid the property being put to sale without repaying the amounts borrowed from the bank. We see no reason to stay all further proceedings on the basis of these objections.

Learned counsel would further state that the petitioners have, consequent on the Hudhud cyclone, made a claim before the Insurance company; and they are ready and willing to repay the amount on receipt of the amounts from the Insurance company. The respondent bank is in no way connected with the petitioners' claim for insurance against the Insurance company.

Learned counsel would request time for repayment of the loan amount. This request is to be addressed to the respondent bank and this Court would not, in the exercise of its jurisdiction under Article 226 of the Constitution of India, prescribe or extend the time within which the petitioners should be permitted to repay the loan amount. We have no reason to doubt that, on a request being made by the petitioners, the respondent bank would consider any reasonable request in accordance with law.

Learned counsel would also draw attention of this Court to an interim order passed in W.P.M.P.No.35275 of 2014 in W.P.No.28170 of 2013 dated 20.09.2014 wherein this Court restrained the respondents from publishing the petitioners' photographs and details in the newspapers for recovery of the outstanding loan account. This Court, however, permitted the respondent bank to avail all its remedies to recover the dues from the petitioners in accordance with law. The dispute in this Writ Petition has no connection whatsoever with W.P.No.28170 of 2014. It is not even the first petitioner's case, before us, that the bank has published his photographs in the newspapers for recovery of the outstanding amount or that they have violated the interim order referred to above.

The Writ Petition as filed is wholly misconceived and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

05th February, 2015.
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